

[Cite as *Strama v. Allstate Ins.*, 2015-Ohio-2590.]

STATE OF OHIO, BELMONT COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

JAMES STRAMA,	)	
	)	
PLAINTIFF-APPELLANT,	)	
	)	CASE NO. 14 BE 8
V.	)	
	)	OPINION
ALLSTATE INSURANCE COMPANY, ET	)	
AL.,	)	
	)	
DEFENDANTS-APPELLEES.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common  
Pleas of Belmont County, Ohio  
Case No. 12CV184

JUDGMENT: Affirmed.

APPEARANCES:  
For Plaintiff-Appellant Attorney Scot M. McMahon  
Attorney Daniel Balgo  
156 Woodrow Avenue  
St. Clairsville, Ohio 43950

For Defendants-Appellees Attorney Keith A. Sommer  
409 Walnut St., P.O. Box 279  
Martins Ferry, Ohio 43935

JUDGES:

Hon. Gene Donofrio  
Hon. Mary DeGenaro  
Hon. Carol Robb

Dated: June 17, 2015

[Cite as *Strama v. Allstate Ins.*, 2015-Ohio-2590.]  
DONOFRIO, P.J.

{¶1} Plaintiff-appellant James Strama appeals a decision of the Belmont County Common Pleas Court awarding summary judgment to defendants-appellees Allstate Insurance Company and Chris Baugh on his claims arising out of the failed sale of his Allstate insurance agency business to Baugh.

{¶2} Plaintiff-appellant James Strama became an Allstate Exclusive Agent in 1998. (Strama Depo. 9-10.) Strama and Allstate's relationship was governed by an agency agreement entitled, Allstate R3001 Exclusive Agency Agreement. (Strama Depo.14-16; Allstate/Baugh's Summary Judgment Motion, Exhibit 1.) The agency agreement provided that Allstate could terminate the relationship at any time for cause:

#### XVII. TERMINATION OF AGREEMENT

\* \* \*

B. This Agreement may be terminated:

\* \* \*

3. By the Company [Allstate], for cause, immediately upon providing written notice to you. Cause may include, but is not limited to, breach of this Agreement, fraud, forgery, misrepresentation or conviction of a crime. The list of examples of cause just stated shall not be construed to exclude any other possible ground as cause for termination.

(Allstate R3001 Exclusive Agency Agreement, p. 7.)

{¶3} Strama acknowledges that Allstate terminated their relationship pursuant to this provision on November 17, 2010. (Strama Depo. 22.) Part of the reason Allstate terminated the relationship was because Strama was issuing multi-discount policies which were not authorized by Allstate. (Strama Depo. 23-24.)

{¶4} The agency agreement contemplates that an Allstate agent develops an economic interest in the agreement and their respective Allstate agency. That economic interest includes the business of the customers serviced by their Exclusive

Allstate Agency, also known as their book of business or simply, book. A provision of the agreement specifically addresses how that interest is to be compensated upon termination:

XIX. TERMINATION PAYMENT OPTIONS:

\* \* \*

B. In the event that this Agreement is terminated:

\* \* \*

2. Immediately by the Company for cause (Section XVII. B. (3) above) \* \* \*

the Company will compute a termination payment amount for you. The computation and payment of this amount are subject to the conditions set forth below and the rules and definitions in the Supplement. The termination payment amount for each eligible line of insurance will be computed as follows:

(Allstate R3001 Exclusive Agency Agreement, p. 8.) The provision then goes on to set forth the computation formula.

{¶5} Although the agency agreement allowed Allstate to simply provide Strama a termination payment upon his termination for cause, Allstate gave Strama the opportunity to sell his book to an Allstate-approved buyer. (Strama Depo. 32.) Allstate put Strama in touch with two potential buyers. Strama ultimately began negotiations with one of them, defendant-appellee Chris Baugh. (Strama Depo. 34-35, 54.)

{¶6} One of the banks Baugh sought to finance the purchase through was Oak Street Funding. (Baugh Depo. 15.) Oak Street's requirements for financing included a purchase agreement and a non-compete agreement between Strama and Baugh, and a non-compete agreement between Strama and Oak Street. (Baugh Depo. 18.) On December 27, 2010, Strama and Baugh entered into a purchase agreement with Strama agreeing to sell his book to Baugh for \$216,000.

(Allstate/Baugh's Summary Judgment Motion, Exhibit 4; Strama's Response, Exhibit 1.) They also executed their non-compete agreement. (Strama's Response, Exhibit 3.)

{¶7} Baugh received pre-approval from Oak Street after he had sent it his financial records and the loss runs on Strama's book for the previous two years. (Baugh Depo. 15.) However, to finalize the loan Oak Street also wanted Strama's tax returns for the previous two years and for him to sign a non-compete agreement with it in order to secure the loan. (Baugh Depo. 16, 18-19.) When Strama did not provide the returns and did not sign the non-compete, Oak Street refused to provide the financing for the sale. (Strama depo. 39-42.)

{¶8} Approximately two weeks after the sale fell through, Allstate absorbed Strama's book. (Baugh Depo. 21-22.) Baugh never took ownership of any portion of Strama's book. (Baugh Depo. 21-22; Krainess Depo. 15.) However, Allstate then assigned a portion of Strama's book to be serviced by Baugh and another portion to be serviced by Joyce Lunsford, another Allstate Exclusive Agent. (Baugh Depo. 22; Krainess Depo. 14-15.) Allstate provided Strama with a termination payment of \$146,456.63 and Strama currently owns Strama Insurance, independent insurance agency. (Strama Depo. 8, 25-26; Krainess Depo. 14.)

{¶9} On April 17, 2012, Strama sued Allstate and Baugh setting forth five causes of action: breach of contract; intentional interference with a contract; civil conspiracy; fraud; and violation of the Ohio Deceptive Trade Practices Act. Essentially, Strama alleged that Allstate intentionally interfered with his contract with Baugh, and that Allstate and Baugh conspired to impede Baugh's purchase of Strama's book. Additionally, after Allstate terminated its relationship with Strama, it sent Allstate marketing materials to Allstate customers listing Strama as an Exclusive Allstate Agent. This comprised Strama's allegation that Allstate violated the Ohio Deceptive Trade Practices Act.

{¶10} Allstate and Baugh filed a joint motion for summary judgment on November 15, 2013. They attached deposition testimony and documentary evidence

in support of their motion. They included Strama's deposition, Baugh's deposition, and the deposition of Scott Krainess, a field sales leader for Allstate, who tried to help Strama sell his book by putting him in touch with Allstate-approved buyers. The documents they attached in support included the Allstate R3001 Exclusive Agency Agreement, the purchase agreement, the non-compete agreement with Oak Street that Strama refused to sign, emails between Oak Street and Strama requesting financial information, and various documents relating to Strama being financially sanctioned by the State of Ohio Department of Insurance for violating underwriting standards by manipulating Allstate's system in order to rewrite policies of customers who were terminated for non-payment of premium.

{¶11} Strama filed a response to Allstate's and Baugh's summary judgment motion on November 26, 2013. In support, he included his own deposition and the depositions of Baugh and Krainess. He also attached the deposition of William Heskett, a former branch manager for Huntington Bank, with whom Baugh had also sought financing for the purchase of Strama's book. Documents Strama attached in support of his response included the purchase agreement, an addendum to the purchase agreement, the non-compete agreement he did sign between himself and Baugh, email correspondence between himself and Heskett concerning financial documents, and marketing materials sent from Allstate to customers with Strama's name on them after it had terminated its relationship with him.

{¶12} Allstate and Baugh followed with a reply in support filed on December 9, 2013, this time also including Heskett's deposition. The trial court held a hearing on the motion on January 21, 2014, and on February 7, 2014, the trial court granted summary judgment in favor of Allstate and Baugh on all of Strama's claims with the exception of his breach of contract claim against Baugh. The court found that there was no evidence that Allstate interfered with the contract between Strama and Baugh or engaged in any conspiracy to harm Strama. Similarly, the court found no evidence of Baugh making a misstatement of material fact with the intent to deceive Strama.

{¶13} However, as it pertained to Strama's breach of contract claim against Baugh, the court did find that there were genuine issues of material fact. The court found that issues of material fact remained as to whether Baugh was required to purchase Strama's agency for \$216,000 regardless of whether Strama agreed to Oak Street's requests for financial information and a five-year covenant. The court found that issues of material fact remained also as to whether Strama provided the financial information to Oak Street. Notably, Baugh has not appealed this portion of the trial court's decision denying his motion for summary judgment as it pertains to Strama's claim for breach of contract against him.

{¶14} The court later filed a corrected entry on April 4, 2014, adding that there was no just cause for delay. This appeal followed.

*Standard of Review*

{¶15} Strama raises three assignments of error, each directed towards the trial court's award of summary judgment in Allstate's and Baugh's favor.

{¶16} An appellate court reviews a trial court's decision on a motion for summary judgment de novo. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, at ¶ 24. Summary judgment can be granted where there remain no genuine issues of material fact for trial and where, after construing the evidence most strongly in favor of the nonmovant, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, ¶ 10, citing Civ.R. 56(C). The burden of showing that there is no genuine issue of material fact initially falls upon the party who files for summary judgment. *Id.*, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 294, 662 N.E.2d 264 (1996).

{¶17} Thereafter, the nonmovant may not rest upon the mere allegations or denials of the party's pleadings but must respond by setting forth specific facts showing there is a genuine issue for trial. *Id.*, citing Civ.R. 56(E). "If the party does not so respond, summary judgment, if appropriate, shall be entered against the party." Civ.R. 56(E). Although courts are cautioned to construe the evidence in favor

of the nonmoving party, summary judgment is not to be discouraged where a nonmovant fails to respond with evidence supporting the essentials of his claim. *Leibreich v. A.J. Refrigeration, Inc.*, 67 Ohio St.3d 266, 269, 617 N.E.2d 1068 (1993).

{¶18} Turning to Strama's individual assignments of error, his first assignment of error states:

THE COURT ERRED IN DETERMINING THAT THERE WERE NO ISSUES OF MATERIAL FACT, WHEN VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, IN REGARDS TO COUNTS I, II, III, IV, AND V IN REGARDS TO DEFENDANT, ALLSTATE, AND COUNTS II, III, AND IV IN REGARDS TO DEFENDANT, CHRIS BAUGH.

{¶19} As indicated, Strama's complaint against Allstate and Baugh set forth five causes of action: Count I – Breach of Contract; Count II – Intentional Interference with a Contract; Count III – Civil Conspiracy; Count IV – Fraud; and Count V – Violation of the Ohio Deceptive Trade Practices Act. While his stated assignment of error references all five claims, Strama only presents arguments under this assignment of error directed towards his claims for intentional interference with a contract, civil conspiracy, and fraud. Thus, we will address only those claims as argued by Strama and in the order presented by him. App.R. 16(A)(7).

*Tortious Interference with a Contract*

{¶20} Strama argues that Allstate intentionally interfered with the contract between himself and Baugh because it directed him to contact Baugh regarding the purchase of his book of business, presented Baugh as an approved buyer, stayed informed during the contract negotiations, and eventually bought back his book of business for over \$69,000 less than the price he had negotiated with Baugh and gave a portion of his book to Baugh to service.

{¶21} The elements of tortious interference with a contract are: (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the

wrongdoer's intentional procurement of the contract's breach, (4) lack of justification, and (5) resulting damages. *Kenty v. Transam. Premium Ins. Co.*, 72 Ohio St.3d 415, 419, 650 N.E.2d 863 (1995), paragraph two of the syllabus. See, also, *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 707 N.E.2d 853 (1999), paragraph one of the syllabus.

**{¶22}** The first two elements are present in this case. There existed a contract. Strama and Baugh entered into a written purchase agreement on December 27, 2010, with Strama agreeing to sell his book to Baugh for \$216,000. (Allstate/Baugh's Summary Judgment Motion, Exhibit 4; Strama's Response, Exhibit 1.) Additionally, Allstate had knowledge of the contract. Scott Krainess, a field sales leader for Allstate, gave deposition testimony. He testified that Allstate's regional office had contacted him indicating Strama's interest in selling his agency. (Krainess Depo. 6.) When asked about his knowledge of the negotiations between Strama and Baugh, he testified that he was sure he had communicated with Baugh "as to the status and ongoing status." (Krainess Depo. 12.)

**{¶23}** Strama unconvincingly attempts to argue that Allstate's knowledge of the purchase agreement between himself and Baugh and Allstate's relationship with Baugh is evidence establishing the third and fourth elements of his claim for tortious interference with a contract. However, there is no evidence that Allstate intentionally (or otherwise) sought to procure a breach of the purchase agreement between Strama and Baugh. The evidence demonstrated that Allstate really had no involvement in the negotiations or resulting purchase agreement. Once Krainess learned of Strama's interest in selling his agency, he testified that his only involvement was referring an Allstate approved buyer to Strama stating precisely, "Once an approved buyer has been approved, it's up to the buyer and seller to reach an agreement. We don't have anything to do with it." (Krainess Depo. 12.)

**{¶24}** In fact, based on Krainess's undisputed testimony, Allstate sought performance of the purchase agreement between Strama and Baugh. He testified that his goal was to help the agent sell their business. (Krainess Depo. 13.) The fact



that Allstate put Strama in touch with Baugh and that Baugh kept Allstate apprised of the status of the negotiations does not establish that Allstate intentionally procured a breach of the purchase agreement.

{¶25} Strama's argument that Allstate had motive for the purchase agreement to fall through is equally unpersuasive. The agency agreement clearly provided that all Allstate had to do was provide Strama with a termination payment. It would seem that the only motive Allstate would have had would have been for the agreement between Strama and Baugh to be performed. If the agreement had been performed, Allstate would not have then had to provide Strama with a termination payment.

{¶26} Likewise, there is no evidence to suggest that Allstate benefitted financially from the purchase agreement failing. In fact, as the trial court observed, it appears as though Allstate incurred costs and expenses that it would not have incurred had the contract between Strama and Baugh been performed. Additionally, Strama makes much of the fact that Allstate ultimately gave a portion of his book to Baugh to service. However, as Allstate illustrates, there was no evidence presented that whatever money Allstate received from Strama for servicing the book was any different from the money Allstate received from having Baugh and the other Allstate agent service Strama's book.

{¶27} In sum, there was no evidence presented to establish Allstate intentionally sought to procure a breach of the purchase agreement between Strama and Baugh. Reasonable minds could only conclude that Strama failed to prove the third and fourth elements of his tortious interference with a contract claim.

#### *Fraud*

{¶28} Next, Strama argues that there was evidence presented that Baugh made fraudulent representations to him that he had the financing necessary to complete the purchase of his book of business.

{¶29} Fraud consists of "(a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and

recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance.” *Groob v. KeyBank*, 108 Ohio St.3d 348, 2006-Ohio-1189, 843 N.E.2d 1170, ¶ 47, quoting *Gaines v. Preterm-Cleveland Inc.*, 33 Ohio St.3d 54, 55, 514 N.E.2d 709 (1987).

**{¶30}** The *only* evidence Strama points to in support of his fraud claim is his own deposition testimony that Baugh came into his office and proclaimed that he was Allstate-approved and that he had a loan that was approved. (Strama Depo. 35.) While reasonable minds may disagree about whether this statement constitutes a material representation, there is no evidence in the record to establish the remaining elements.

**{¶31}** The element that is particularly absent in this case is reliance by Strama upon Baugh’s alleged representation. Strama testified, “Baugh came in, and he said -- I think -- and I don’t know -- I thought he said like ‘Look no further, I’m your man, I’m Allstate-approved,’ and -- and/or -- and ‘I had the Loan -- I have a loan that’s approved.’ That’s the way I remember it, but that -- something like that.” (Strama Depo. 35.) However, Strama testified at length about receiving requests from Oak Street and another lender seeking documents from him concerning the purchase.

**{¶32}** The record reflects that Strama was well aware that the financing for the purchase was not settled. He testified at one point that he thought Baugh was “hustling around to get the loans.” (Strama Depo. 38.) When asked about the non-compete agreement Oak Street was requesting from him, Strama testified as follows:

Q. \* \* \* Oak Street was one of the lenders for Baugh, that was requiring you to sign a non-compete, right?

A. Right.

Q. And you refused to sign Oak Street’s non-compete, right?

A. Correct.

Q. And because you refused to sign Oak Street's non-compete, Oak Street would not loan Baugh the money, right?

A. Correct.

(Strama Depo. 41-42.)

{¶33} In sum, there was no evidence to establish that Baugh falsely represented to Strama that he had the financing for the purchase with the intent of misleading Strama to rely on it. Nor is there evidence that Strama justifiably relied on that alleged misrepresentation. Thus, reasonable minds could only conclude that Strama failed to establish the third, fourth, and fifth elements of his fraud claim.

*Civil Conspiracy*

{¶34} Strama argues that Allstate and Baugh conspired to gain control of his book of business for less than the contract price denying him a profit of approximately \$69,000.

{¶35} The elements of a civil conspiracy claim are: “(1) a malicious combination, (2) involving two or more persons, (3) causing injury to person or property, and (4) the existence of an unlawful act independent from the conspiracy itself.” *State ex rel. Fatur v. Eastlake*, 11th Dist. No. 2009-L-037, 2010-Ohio-1448, ¶ 45, quoting *Gibson v. City Yellow Cab Co.* (Feb. 14, 2001), 9th Dist. No. 20167, 2001 WL 123467 (Feb. 14, 2001). “An underlying tort is necessary to give rise to a cause of action for conspiracy.” *Ohio Assn. of Pub. School Emps./AFSCME Local 4, AFL–CIO v. Madison Local School Dist. Bd. Of Edn.*, 190 Ohio App.3d 254, 2010-Ohio-4942, 941 N.E.2d 834, ¶ 62 (11th Dist.) quoting *Stiles v. Chrysler Motors Corp.*, 89 Ohio App.3d 256, 266, 624 N.E.2d 238 (6th Dist.1993).

{¶36} Here, Strama essentially contends that Allstate and Baugh maliciously conspired to have the purchase agreement fail. Since the purchase agreement price of \$216,000.00 was approximately \$69,000.00 more than the \$146,456.63 termination payment he received from Allstate, he argues that he suffered that amount in damages as a result of their conspiring for the purchase agreement to fail.

{¶37} The principal reason Strama's civil conspiracy claim falls short concerns the element of an underlying tort or unlawful act. To establish the unlawful act element, Strama simply refers to his other claims of breach of contract, intentional interference with a contract, and fraud. For the reasons explained previously concerning those particular claims, Strama failed to produce evidence in support of his claims for intentional interference with a contract and fraud. While the trial court did hold that there remains a genuine issue of material fact concerning whether Baugh breached the purchase agreement, a civil conspiracy claim requires an underlying tortious act and breach of contract cannot serve as the underlying, independent tortious act. *Bindra v. Fuenning*, 9th Dist. No. 26489, 2013-Ohio-5722, ¶ 32. See also *Wagoner v. Leach Co.*, 2d Dist. 17580, 1999 WL 961166, \*2 (July 2, 1999) ("a party cannot be held liable for conspiring to breach his own contract.")

{¶38} In sum, reasonable minds could only conclude that Strama failed to provide evidence establishing all of the elements of each of his claims of intentional interference with a contract, fraud, and civil conspiracy. Accordingly, Strama's first assignment of error is without merit.

{¶39} Strama's second assignment of error states:

THE TRIAL COURT USED THE IMPROPER STANDARD WHEN CONSIDERING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BY NOT ALLOWING PLAINTIFF TO RELY ON CIRCUMSTANTIAL EVIDENCE TO PROVE HIS CLAIMS, INSTEAD REQUIRING "SMOKING GUN" THAT THE COURT COULD NOT FIND.

{¶40} The trial court held a hearing on the summary judgment motion on January 21, 2014. During the hearing, the court inquired of Strama's counsel about what evidence there was to support his client's claims against Allstate and noted, "I don't see any smoking gun regarding Allstate." (Summary Judgment Motion Hearing Tr. 15.) Strama contends that this statement made by the trial court reflects that it

applied the wrong standard to the summary judgment proceedings and prevented him from relying on circumstantial evidence.

{¶41} There is no dispute that circumstantial evidence and direct evidence inherently possess the same probative value. *State v. Jenks*, 61 Ohio St.3d 259, 274, 574 N.E.2d 492 (1991). However, in this case, the record does not support Strama's assertion that the trial court somehow disregarded circumstantial evidence.

{¶42} In its decision ruling on the motion, the trial court appropriately observed that the non-moving party "must do more than simply show that there is some metaphysical doubt as the material facts." Quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 138 (1986). See also *Piergallini v. Brister*, 7th Dist. No. 01-BA-15, 2002-Ohio-2996, ¶ 26. The trial court also rightly observed that the mere existence of a scintilla of evidence in support of the non-movant's position will be insufficient; there must be evidence on which the jury could reasonably find for the non-movant. Citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). See also *Kimble v. Troyan*, 124 Ohio App.3d 599, 604, 707 N.E.2d 1, 4 (7th Dist.1997).

{¶43} The problem the trial court had with Strama's claims was that he had failed to introduce *any* evidence, direct or circumstantial, that Allstate had conspired with Baugh to make the purchase agreement fall through. As this court has observed, "[m]ere speculation or possibility is not enough to defeat a summary judgment motion." *Allstate Ins. Co. v. Sears*, 7th Dist. No. 06 BE 10, 2007-Ohio-4977, ¶ 74, citing *Stinson v. England*, 69 Ohio St.3d 451, 457, 633 N.E.2d 532 (1994). See also *Blackwell v. Farmers Ins. Exchange*, 4th Dist. No. 05CA3, 2005-Ohio-3499, 2005 WL 1595246, at ¶ 48 ("Speculation is not sufficient to overcome a properly supported summary judgment motion"). Moreover, this court's appellate review of summary judgment proceedings is de novo. Therefore, even if the trial court had applied the wrong standard, this court's standard of review would render any such error harmless.

{¶44} Accordingly, Strama's second assignment of error is without merit.

**{¶45}** Strama's third and final assignment of error states:

THE COURT USED THE IMPROPER STANDARD WHILE CONSIDERING COUNT V, STATING THAT THERE WAS NO EVIDENCE OF DAMAGES WHEN THE STANDARD CALLS ONLY FOR THE LIKELIHOOD OF INJURY.

**{¶46}** This assignment of error concerns Count V of Strama's complaint. Count V alleged that Allstate and Baugh violated the Ohio Deceptive Trade Practices Act (ODTPA) by sending Allstate marketing materials to Allstate customers listing Strama as an Exclusive Allstate Agent after Allstate had terminated its relationship with Strama. While this count of Strama's complaint seemed to include both Allstate and Baugh as defendants, counsel for Strama made it clear at the hearing on the motion for summary judgment that Count V was against Allstate only.

**{¶47}** In their appellate briefs, each of the parties cite to *Craven v. Aultman Coll. of Nursing & Health Sciences*, 4th Dist. No. 2011-CA-00022, 2011-Ohio-4974, as setting forth the necessary elements for a claim under ODTPA. In *Craven*, the trial court, citing R.C. 4165.02, apparently gleaned from that section the following four elements necessary for a ODTPA claim: (1) a false statement or statement which is misleading; (2) which statement actually deceived or has the tendency to deceive a substantial segment of the target audience; (3) the deception is material in that it is likely to influence a purchasing decision; and (4) the plaintiff has been or is likely to be injured as a result. *Id.* at ¶ 42.

**{¶48}** Count V of Strama's complaint alleged as follows:

27. The Defendants willfully represented Mr. Strama's services as their own, by distributing material including postcards to clients and other mailings that still listed Mr. Strama as a representative of Allstate. These representations are continuing, despite that Mr. Strama is not affiliated with either Defendant Baugh or Defendant Allstate.

28. These mailings went to potential clients in the area around Mr. Strama's new business and causes confusion or misunderstanding as to affiliation, connection, or association between Mr. Strama and Defendants Baugh and Allstate.

29. This confusion caused injury to Mr. Strama by interfering with potential clients.

**{¶49}** The language of Count V of Strama's complaint mirrors the language the ODTPA found at R.C. 4165.02(A)(3):

(A) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person does any of the following:

\* \* \*

(3) Causes likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another[.]

**{¶50}** The principal shortcoming of Strama's ODTPA claim concerns the damages element of his claim. The trial court here found that there was no evidence of Strama sustaining any injury or harm as a result of the mailings. Strama argues that the trial court applied an improper standard of damages to his ODTPA claim and that the standard for that claim is likely injury.

**{¶51}** As indicated, the trial court in *Craven* indicated that "likely injury" was enough to establish an ODTPA claim under R.C. 4565.02. However, there is no case law or statutory support for the approach to damages taken by the trial court in *Craven*. The trial court in *Craven* referenced R.C. 4565.02 when setting forth the four elements; however, that section does not directly address damages.

**{¶52}** Moreover, the ODTPA clearly sets forth the two forms of relief available under the act – an injunction or damages. R.C. 4165.03. A plaintiff seeking injunctive relief need only demonstrate that they are likely to be damaged by the person who

commits the allegedly deceptive trade practice. R.C. 4165.03(A)(1). However, a plaintiff seeking damages, as Strama was in this case, may *only* “recover actual damages.” R.C. 4165.03(A)(2).

{¶153} In his complaint, Strama plainly sought only monetary damages for his ODTPA claim and not injunctive relief. Thus, the proper standard, as applied by the trial court in this case, was actual damages, not a likelihood of damages. In other words, Strama was required to present evidence of actual damages under the statute, not just a likelihood of damages. Given the dearth of case law in Ohio concerning deceptive trade practices, courts have looked to the comparable federal law for guidance. *Cesare v. Work*, 36 Ohio App.3d 26, 28, 520 N.E.2d 586 (9th Dist.1987). In order to award monetary relief, it has been observed that “courts generally require ‘something more,’ such as evidence of actual losses suffered by the plaintiff or evidence of actual confusion of some customers.” *Id.*, citing *Frisch’s Restaurants, Inc. v. Elby’s Big Boy of Steubenville, Inc.*, 670 F.2d 642, 647 (6th Cir.1982).

{¶154} Here, there is no evidence in the record that Strama suffered actual damages as a result of the mailings. Strama testified at his deposition that he has “no idea” whether his current insurance agency lost any customers because of the mailings. (Strama Depo. 105.) Strama also testified that he does not know whether he has been harmed in any way as a result of the mailings. (Strama Depo. 113.) For example, he presented no evidence of anyone who received the mailings and relying on them, continued dealing with Allstate because the mailings led them to believe Strama was still an Allstate agent.

{¶155} Since there is no evidence in the record that Strama suffered actual damages as a result of the mailings, his ODPTA claim fails. Accordingly, Strama’s third assignment of error is without merit.



{¶56} The judgment of the trial court is hereby affirmed.

DeGenaro, J., concurs.

Robb, J., concurs.